

REMARKS

Claims 1-35 and 49-95 are pending and, for the reasons discussed below, Applicants hereby amend Claims 2, 13, 16, 17, 21, 29, 50, 53, 62, 65, 66, 78, 81 and 82 and add new dependent Claim 96. Unelected Claims 36-48 have been withdrawn by the Examiner, and Applicants respectfully reserve the right to pursue Claims 36-48 in a continuing application, e.g., a divisional application, a continuation application, etc.

I. Rejection of Claims 1-35 under 35 U.S.C. § 112 ¶ 2

At page 2 of the Office Action, the Examiner has rejected Claims 1-35 under 35 U.S.C. § 112 ¶ 2 as “being indefinite for failing to particularly point out and distinctly claim the subject-matter which applicant regards as the invention.” More specifically, the Examiner has articulated three concerns, each of which is discussed below.

First, the Examiner states that Claim 1 includes insufficient antecedent basis for “the first bidding data” in line 13 thereof. Applicants respectfully submit that Claim 1 includes sufficient antecedent basis for “the first bidding data” by first reciting “storing the bids and the processed bid data in a data base of the moderating computer as *first bidding data*” (italics added) in lines 11-12 of Claim 1.

Second, the Examiner observes that independent Claims 1 and 20 do not require the presence of the customer, and alleges that dependent Claims 2 and 21 are “confusing.”¹ Applicants note that Claim 2 has been amended herein to read as follows:

¹ The Examiner has also expressed similar concern with respect to unelected Claim 37. However, Claim 37 had been withdrawn prior to rejection thereof under 35 U.S.C. § 112

"A method of Claim 1 in which the at least one reseller or the at least one customer includes at least one end user." A similar amendment has also been made to Claim 21. In this regard, it should be clear that at least one end user is included within the collective scope of "the at least one reseller or the at least one customer" for the purposes of Claims 2 and 21. In addition, although the Examiner has not rejected Claim 50 under 35 U.S.C. § 112 ¶ 2, Applicants have similarly amended Claim 50.

Third, the Examiner states that Claim 20 includes insufficient antecedent basis for "*c. in the moderating computer of the first control computer*" (italics added) (Claim 20, line 16). In this regard, Applicants respectfully submit that Claim 20 includes sufficient antecedent basis for "*the moderating computer or the first control computer*" (italics added) – the correct phrasing in the Application as filed and published - by first reciting "a moderating computer" in lines 2-3 of Claim 20 and first reciting "a first control computer" in line 4 of Claim 20.

For at least the reasons discussed above, Applicants respectfully request withdrawal of all § 112 rejections and allowance of all pending claims.

and for the reason of being unelected. Applicants thus believe that the rejection of Claim 37 under 35 U.S.C. § 112 is moot and that comments concerning same are not necessary at such time. Accordingly, it shall not be construed that Applicants acquiesce with Examiner's comments concerning Claim 37.

II. Rejection of Independent Claim 1 under 35 U.S.C. § 103(a)

At pages 2-3 of the Office Action, the Examiner has rejected Claim 1 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,677,552 ("Sibley"). Applicants respectfully traverse this rejection of Claim 1 for at least the reasons discussed below.

Applicants respectfully submit that Sibley does not disclose or suggest all of the claim limitations of Claim 1. See M.P.E.P. § 2143.03 ("To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art").

Sibley describes a method and system enabling traders who are members of one local commodity exchange to communicate and trade with other traders who are members of a different local commodity exchange via a satellite telecommunications network, using a central host computer to facilitate the routing and storing of trading information. Sibley summarizes this method and system as follows: "Thus, the user member of any one local exchange can communicate directly with the central exchange host to obtain market information relative to any member exchange. He can also make bids and offers to any other local exchange user member through his own local exchange which communicates through the satellite system with the central exchange host and with the other selected exchange." Sibley at column 1, lines 59-66 and, more generally, column 1, line 46 to column 2, line 40.

Sibley describes transactions being initiated by one trader entering his "position" (e.g., his bid to buy or his offer to sell a certain commodity) at his remote computer terminal. This bid or offer is then transmitted via satellite to the central

exchange host computer and routed to the other participating local commodity exchanges. Upon acceptance of this bid or offer by another trader on any of these local exchanges, the central exchange host computer transmits a transaction confirmation to the two traders involved in this completed transaction as well as to all of the participating members of the two local exchanges on which the two traders involved in this transaction are members. See Sibley at column 7, lines 7-29.

The following example illustrates some of the differences between the Sibley disclosure and the process to which Claim 1 of the pending Application is limited. "Trader A" on one local commodity exchange enters into the Sibley system his offer to sell 10,000 barrels of oil at \$58 per barrel. This offer to sell is transmitted via the central exchange host computer to other participating traders on other local commodity exchanges. "Trader B" on one of these other local exchanges sees Trader A's offer to sell and enters his acceptance of Trader A's offer. That acceptance is then transmitted via the central exchange host computer to Trader A. Notice of the completed transaction is also transmitted by the central exchange host computer to all participating members of the two local commodity exchanges in which Trader A and Trader B are members. Applicants respectfully submit that the central exchange host computer of Sibley has no role in determining whether Trader B (or Traders C, D, E or F, for that matter) will be the counterparty who first accepts Trader A's offer.

Nothing in Sibley would suggest to a person having ordinary skill in the art that the central exchange host computer performs any functions that can be reasonably construed as "determining a winner" or, as the Examiner states in the accompanying parenthetical in the Office Action, that "participating in the auction indicates [a]

'designating' step." The central exchange host computer (i) enables the communication of bids and offers between traders on different local commodity exchanges, and (ii) serves as the device through which completed trades are confirmed to the two traders participating as buyer and seller in each transaction and reported to the other traders on the respective exchanges.

Sibley does not teach an auction method and system of the type recited in Claim 1. Instead, Sibley describes a communications conduit linking different local commodity exchanges to each other, with the capability to facilitate trading transactions between traders operating on different exchanges rather than only on the same exchange. Absent this inter-exchange communications and transactions capability, the method and system described in Sibley would appear to be very similar to the operations of most established local commodity exchanges in the world.

Applicants submit that Claim 1 is patentable for at least the reason that Sibley fails to disclose or suggest all recited claim limitations of Claim 1. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of Claim 1 and allow Claim 1 to proceed to issuance.

At page 2 of the Office Action, the Examiner further states that it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Sibley to expand "bids to provide energy" to include bids to provide electric power or natural gas. The Examiner points out that, while Sibley does not teach bidding for providing electric power or natural gas, Sibley does teach bidding for

providing oil and gasoline.² However, there are meaningful distinctions between electric power or natural gas and oil or gasoline for the purposes of Claims 1, and Applicants have thus recited Claim 1 to state “consisting of electric power or natural gas” so as to acknowledge such distinctions. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of Claim 1 and allow Claim 1 to proceed to issuance.

III. Rejection of Independent Claims 20, 49, 68 and 86 under 35 U.S.C. § 103(a)

At pages 2-4 of the Office Action, the Examiner has rejected independent Claims 20, 49, 68 and 86 under 35 U.S.C. § 103(a) as unpatentable over Sibley.³ Applicants respectfully traverse these rejections.

With respect to Claim 49, Applicants respectfully suggest that the Office Action does not include a detailed rationale for the rejection of Claim 49.

Applicants respectfully submit that independent Claims 20, 49, 68 and 86 are patentable for at least the reasons set forth above in regard to independent Claim 1. Accordingly, Applicants respectfully request that the Examiner withdraw the rejections to independent Claims 20, 49, 68 and 86 and allow these claims to proceed to issuance.

² Sibley also discloses propane.

³ The Examiner has similarly rejected unelected independent Claim 36. However, Claim 36 had previously been withdrawn prior to rejection of Claim 36 under 35 U.S.C. § 103(a) and for the reason of being unelected. Applicants thus believe that the rejection of Claim 36 under 35 U.S.C. § 103(a) is moot and that comments concerning same are not necessary at such time. Accordingly, it shall not be construed that Applicants acquiesce with Examiner's comments concerning Claim 36.

IV. The Dependent Claims - Claims 2-19, 21-35, 50-67, 69-85, and 87-95

Applicants believe that independent Claims 1, 20, 49, 68 and 86 are patentable for at least the reasons stated above. Applicants, therefore, believe that each of the dependent Claims 2-19, 21-35, 50-67, 69-85 and 87-95 is patentable at least by virtue of its dependency on the respective patentable base claim, i.e., independent Claims 1, 20, 49, 68 or 86. Accordingly, Applicants respectfully request withdrawal of all rejections to dependent Claims 2-19, 21-35, 50-67, 69-85 and 87-95 and the allowance of these claims.

In addition, Applicants believe that each of the dependent claims 2-19, 21-35, 50-67, 69-85 and 87-95 are patentable by virtue of the elements recited in such claims and respectfully traverse the rejections made to each respective dependent claim. Applicants submit the following as examples of these additional grounds for patentability (which are not intended to be exhaustive of all arguments in support of patentability of such dependent claims) and respectfully request allowance of all pending dependent claims.

a. Rejection of Dependent Claims 2, 21 and 50 under 35 U.S.C. § 103(a)

At page 4 of the Office Action, the Examiner has rejected Claims 2, 21 and 50 under 35 U.S.C. § 103(a) as being unpatentable over Sibley.⁴ Applicants

⁴ The Examiner has similarly rejected unelected dependent Claim 37. However, Claim 37 had previously been withdrawn prior to rejection of Claim 37 under 35 U.S.C. § 103(a) for the reason of being unelected. Applicants thus believe that the rejection of Claim 37 under 35 U.S.C. § 103(a) is moot and that comments concerning same are not

respectfully traverse this rejection of Claims 2, 21 and 50 in view of at least an additional ground supporting patentability for Claims 2, 21, and 50.

Sibley refers to user members of the various local commodity exchanges utilizing the central exchange host to trade with user members of other local commodity exchanges. The “users” in Sibley are traders ready to buy or sell the commodities trading on the various local commodity exchanges, typically with no intention to use or consume the commodities they trade. However, the “at least one reseller or the at least one customer” of Claims 2, 21 and 50 includes the persons or entities (“end users”) who will, in fact, use or consume electric power or natural gas at one or more end-user facilities.

For at least this additional ground, Applicants respectfully submit that Claims 2, 21 and 50 are patentable. Applicants respectfully request withdrawal of the rejection to Claims 2, 21 and 50 and request allowance thereof.

b. Rejection of Dependent Claims 3, 22 and 51 under 35 U.S.C. § 103(a)

At page 4 of the Office Action, the Examiner has rejected Claims 3, 22 and 51 under 35 U.S.C. § 103(a) as being unpatentable over Sibley. However, Applicants believe that dependent Claims 2, 21 and 50 are patentable for at least the reasons Applicants have provided above in response to the Examiner’s rejection of Claims 2, 21 and 50. Because Claims 3, 22 and 51 depend on Claims 2, 21 and 50, Applicants respectfully submit that Claims 3, 22 and 51 are each patentable at least by virtue of

necessary at such time. Accordingly, it should not be construed that Applicants acquiesce with Examiner’s comments concerning Claim 37.

their dependency on patentable claims 2, 21 and 50, respectively. For at least this reason, Applicants respectfully request withdrawal of the rejection to dependent Claims 3, 22 and 51, and request allowance of same.

c. *Rejection of Dependent Claims 4, 23, 53 and 88 under 35 U.S.C. § 103(a)*

At page 4 of the Office Action, the Examiner has rejected Claims 4, 23, 53 and 88 under 35 U.S.C. § 103(a) as being unpatentable over Sibley. Applicants respectfully traverse this rejection of Claims 4, 23, 53 and 88 in view of at least an additional ground supporting patentability for these Claims. More particularly, Applicants respectfully submit that Sibley does not disclose or suggest the feature of “designat[ing] *at least two* Providers of the plurality of energy Providers.” (italics added)

The Examiner refers to “conducting a trade via the auction.” However, Applicants respectfully submit that Sibley does not disclose an auction and refer to the remarks above concerning the rejection of Claim 1.

The Examiner appears to suggest that a trader/participant in Sibley can purchase energy from a plurality of energy providers in a manner similar to that of a buyer in the method and system recited by Claims 4, 23, 53 and 88 of the pending Application (and within the scope of the respective independent claims on which such claims depend). Instead, Applicants respectfully submit that Sibley describes a method and system of separate one-to-one transactions between two traders (one buying and one selling in each completed trade). Sibley does not disclose or suggest an arrangement in which one buyer contracts with more than one seller as part of a single auction-type transaction, as is contemplated within the scope of Claims 4, 23, 53 and 88

(and within the scope of the respective independent claims on which they depend). In Sibley each completed trade is a transaction between one buyer and one supplier, not between one buyer and a multitude of suppliers.

Because Sibley does not disclose or suggest the feature of “designat[ing] *at least two* Providers of the plurality of energy Providers” (italics added), Applicants respectfully submit that Claims 4, 23, 53 and 88 are patentable. Applicants respectfully request withdrawal of the rejection to Claims 4, 23, 53 and 88 and request allowance thereof.

Applicants note that Claim 53 has been amended, but that such amendment is neither for reasons relating to the rejection of Claim 53, nor for reasons relating to patentability. More particularly, Applicants have amended Claim 53 to correct a previous clerical error omitting the word “one” from the phrase “at least one reseller” in line 5 of Claim 53.

d. Rejection of Dependent Claims 5, 13, 14, 16, 24, 29, 30, 54, 62, 63, 65, 69, 78-80 and 89 under 35 U.S.C. § 103(a)

At page 5 of the Office Action, the Examiner has rejected Claims 5, 13, 14, 16, 24, 29, 30, 54, 62, 63, 65, 69, 78-80 and 89 under 35 U.S.C. § 103(a) as being unpatentable over Sibley. Applicants respectfully traverse this rejection of Claims 5, 13, 14, 16, 24, 29, 30, 54, 62, 63, 65, 69, 78-80 and 89 in view of at least an additional ground supporting patentability for these Claims.

First, the Examiner has again referenced "conducting a trade via the auction." Again, Applicants respectfully submit that Sibley does not disclose an auction and refer to the remarks above concerning the rejection of Claim 1.

The Examiner also suggests that "conducting a trade of energy via the auction indicates ability to supply the contracted volume of energy." From this statement, it appears that the Examiner has equated the type of transactions described in Sibley, and the Sibley method and system enabling such transactions, to the type of transactions enabled by the method and system described in the pending Application. However, the transactions described in Sibley are typical of an established commodity exchange. Trades are entered into by the user members (traders) in order to buy or sell a specific quantity of a particular commodity at a specific price. In every completed trade in the Sibley method and system, the seller is contractually committed to supply the buyer with the specific quantity of the desired commodity – no more, no less. In order to accumulate large quantities of a particular commodity, a buyer may have to enter into several trades, each with its own specific price, volume, delivery and settlement terms.

The subject matter of Claim 1 relates to an energy auction process enabling the procurement of electric power or natural gas by or on behalf of at least one buyer (for example, one or more resellers or end users, including end users who are customers of a reseller). Bidding under this auction method and system is based on the future energy needs of one or more of these buyers (if the buyer is a reseller, then on the future energy needs of some or all of the end user customers of this reseller) for a specific future time interval (e.g., one month, 12 months, three years, etc.). To give

potential suppliers more precise data on which to base their bids, such suppliers can be provided access to historical energy usage data associated with these buyers (again, if the buyer is a reseller, then the historical energy usage data associated with some or all of the end user customers of this reseller). With access to this historical energy usage data, potential suppliers have a reasonable basis on which to estimate the likely future energy needs of the applicable end users (or group of end users) – and, therefore, a reasonable basis on which to make their respective bids. This is very different from the method and system disclosed in Sibley, where a seller agrees to sell to the buyer, and the buyer agrees to buy from that seller, a specific amount of a commodity (e.g., 10,000 barrels of crude oil at \$58 per barrel), regardless of the buyer's actual future usage.

Within the scope of independent Claims 1, 20, 49, 68 and 86, the exact quantity of energy that the winning providers have committed to supply to the buyer, as a result of the auction process, will not be known in many cases until after the specific future time interval (for which the winning providers are committed to supply energy to the buyer) has expired – which can be months or even years after the auction takes place. Typically thereafter, a winning provider in such cases knows for certain how much energy it had committed at the time of the auction to supply to the buyer.

Second, Applicants respectfully submit that Sibley does not disclose or suggest the feature of “committed to supply 100% of the electric power or natural gas needed” as such is recited in dependent Claims 5, 14, 24, 30, 54, 63, 69, 79 and 89.

Independent Claims 1, 20, 49, 68 and 86 all refer to an auction process in which one or more designated energy providers each commit to supply at least a portion of the electric power or natural gas needed in the future by one or more buyers

(e.g., one or more resellers or end users, including end users who are customers of a reseller). Dependent Claims 5, 14, 24, 30, 54, 63, 69, 79 and 89 refer to an auction process in which the designated energy providers (when their respective commitments are summed) are committed to supply, during a specific future time interval, 100% of the electric power or natural gas needed by one or more buyers (e.g., the future energy usage requirements of one or more resellers or end users, including the future energy usage requirements of end users who are customers of a reseller).

Sibley, with its focus on facilitating commodity trades between members of different local commodity exchanges, and with each trade including the sale of a specific commodity in a specific quantity at a specific price (regardless of the buyer's future usage requirements), contains no disclosure similar in any material respect to the claimed subject matter of dependent Claims 5, 14, 24, 30, 54, 63, 69, 79 and 89.

Third, Applicants respectfully submit that Sibley does not disclose or suggest the feature of "at least one standard unit or block of power or natural gas" as such is recited in dependent Claims 13, 29, 62 and 78. Dependent Claims 13, 29, 62 and 78 refer to an auction process in which bidders are able to submit bids to provide "at least one standard unit or block of power or natural gas." For reasons unrelated to patentability and/or to the rejection of dependent Claims 13, 29, 62 and 78, Applicants herein amend Claims 13, 29, 62 and 78 to clarify that the bids of Claims 13, 29, 62 and 78 are part of an auction process based on the future energy needs of at least one buyer (e.g., one or more resellers or end users, including end users who are customers of a reseller), by introducing certain of the limitations appearing in dependent Claims 8, 26, 58 or 73, respectively.

Fourth, dependent Claims 16 and 65 refer to an auction process in which at least a first designated provider is to supply a specific quantity or block of electric power or natural gas. In this regard Applicants wish to bring Claim 81 to the attention of the Examiner. In order to clarify that Claims 16 and 65 (and similar Claim 81) refer to an auction process based on the future energy needs of at least one buyer (e.g., one or more resellers or end users, including end users who are customers of a reseller), Applicants have amended Claims 16, 65 and 81 herein for reasons unrelated to patentability and/or to the rejection of Claims 16, 65 and 81, by introducing certain of the limitations appearing in dependent Claims 17, 66 or 82, respectively.

With respect to Claim 80, please refer to the remarks below concerning the Examiner's rejection of dependent Claims 7, 56 and 71.

For at least the reasons stated above (and below with respect to Claim 80) Applicants respectfully traverse the Examiner's rejection of Claims 5, 13, 14, 16, 24, 29, 30, 54, 62, 63, 65, 69, 78-80 and 89 in view of at least an additional ground supporting patentability for these Claims. Applicants respectfully request withdrawal of the rejection of these claims and request allowance thereof.

e. *Rejection of Dependent Claims 6, 15, 25, 55, 64 and 90 under 35 U.S.C. § 103(a)*

At page 5 of the Office Action, the Examiner has rejected Claims 6, 15, 25, 55, 64 and 90 under 35 U.S.C. § 103(a) as being unpatentable over Sibley. Applicants respectfully traverse this rejection of Claims 6, 15, 25, 55, 64 and 90 in view of at least an additional ground supporting patentability for these Claims. More particularly,

Applicants assert that Sibley does not disclose or suggest the “bid formulation requirements” feature of Claims 6, 15, 25, 55, 64 and 90.

For the central exchange host in Sibley to facilitate trades between traders at different established commodity exchanges, the Sibley method and system must be structured to comply with all state and federal rules and regulations (including those of the U.S. Securities and Exchange Commission) governing trading activities on an exchange, such as the legal rules and regulations pertaining to best execution, settlement practices, short sales, fraud prevention, etc. These rules and regulations generally apply to trading activities at all U.S.-based exchanges and are designed to protect the trading markets from fraudulent activities and unsound practices that would likely lead to a loss of confidence by the investing public in U.S. capital markets.

These state and federal rules and regulations are not particularly relevant to the “bid formulation requirements” of Claims 6, 15, 25, 55, 64 and 90 (as well as Claim 70). The “bid formulation requirements” of Claims 6, 15, 25, 55, 64 and 90 (as well as Claim 70) are flexible and customizable for each energy auction while, of course, just the opposite is true for the state and federal rules and regulations governing trading activities (including the SEC rules) – i.e., they are standardized as much as possible in order to apply broadly to any and all regulated transactions.

For at least the reasons stated above, Applicants respectfully traverse this rejection of Claims 6, 15, 25, 55, 64 and 90 in view of at least an additional ground supporting patentability for these Claims.

f. Rejection of Dependent Claims 7, 56 and 71 under 35 U.S.C. § 103(a)

At page 5 of the Office Action, the Examiner has rejected Claims 7, 56 and 71 under 35 U.S.C. § 103(a) as being unpatentable over Sibley. Applicants respectfully traverse this rejection of Claims 7, 56 and 71 in view of at least an additional ground supporting patentability for these Claims.

In the Sibley method and system, a selling trader offers to sell a specific amount of a specific commodity at a specific price, with no regard whatsoever to the future usage requirements of the buying trader.

However, in the energy auction process referred to in Claims 7, 56 and 71, bidding by potential suppliers is based on the future energy needs of one or more buyers (e.g., one or more resellers or end users, including end users who are customers of a reseller). The bids referred to in Claims 7, 56 and 71 indicate the quantity of electric power or natural gas the bidder is willing to offer to sell, with his bid based on the electric power or natural gas needed for use in the future by one or more buyers (e.g., one or more resellers or end users, including end users who are customers of a reseller). The bid formulation requirements specify the required elements for a bid to be considered valid including, for example, whether bids will be based on supplying all of an end user's energy needs during a specific future time interval or supplying only a portion of such needs (e.g., see the Application specification at page 22, line 488 to page 23, line 514). In many cases, the exact quantity of energy that the winning bidders have committed to supply to the buyer, as a result of the auction process, will not be known until after the specific future time interval has expired.

This is very different than the basis on which bids to sell and offers to buy are made in Sibley.

For at least the reasons stated above, Applicants respectfully traverse this rejection of Claims 7, 56 and 71 in view of at least an additional ground supporting patentability for Claims 7, 56 and 71.

Also, because Applicants believe that Claims 6, 55 and 70 are patentable at least for the reasons stated above, and because Claims 7, 56 and 71 depend on Claims 6, 55 and 70, Applicants respectfully submit that Claims 7, 56 and 71 are patentable at least by virtue of their dependency on Claims 6, 55 and 70.

g. Rejection of Dependent Claims 10, 27, and 75 under 35 U.S.C. § 103(a)

At page 5 of the Office Action, the Examiner has rejected Claims 10, 27 and 75 under 35 U.S.C. § 103(a) as being unpatentable over Sibley. Applicants respectfully traverse this rejection of Claims 10, 27 and 75 in view of at least an additional ground supporting patentability for Claims 10, 27 and 75. More particularly, Sibley does not disclose or suggest the “decision rules” feature of Claims 10, 27 and 75.

The so-called decision rules the Examiner cites in Sibley are rules designed to standardize all trading activities passing through Sibley's central exchange host computer. The “decision rules” feature recited in Claims 10, 27 and 75 are rules designed to enable custom parameters to be imposed on the processing of the bids submitted by potential suppliers. These decision rules of Claims 10, 27 and 75 are applied by the auction moderator (or first control computer) as part of the process of designating winning bidders.

For at least the reasons stated above, Applicants respectfully traverse this rejection of Claims 10, 27 and 75 in view of at least this additional ground supporting patentability for these Claims.

h. Rejection of Dependent Claims 17, 66 and 82 under 35 U.S.C. § 103(a)

At pages 5-6 of the Office Action, the Examiner has rejected Claims 17, 66 and 82 under 35 U.S.C. § 103(a) as being unpatentable over Sibley. Applicants respectfully traverse these rejections of Claims 17, 66 and 82 in view of at least an additional ground supporting patentability for Claims 17, 66 and 82. More particularly, Sibley does not disclose or suggest a “default provider.”

It appears that the Examiner has assumed that a default provider (as a trader selling a commodity) is an obvious extension of Sibley’s method and system. However, Applicants respectfully submit that the default provider recited in Claims 17, 66, and 82 plays a very different role than the role played by traders selling commodities on established commodity exchanges.

An exemplary default provider of Claim 17, 66 or 82 may be characterized, for example, as a shortfall supplier supplying electric power or natural gas to one or more buyers in amounts sufficient to cover the difference, if any, between the quantities being supplied by the designated providers and the quantities needed for use by such buyer(s) (e.g., one or more resellers or end users, including end users who are customers of a reseller). For example, in the event that one or more energy providers (when their respective winning bids in the auction are summed) are designated to supply less than 100% of the electric power or natural gas needed for future use by an

end user during a specific future time interval, a default provider can be utilized to supply the remaining energy needed by that end user during such timeframe. Sibley, on the other hand, describes a standard commodities trading environment in which discrete trades are made for specific quantities at specific prices.

Applicants have herein amended Claims 17, 66 and 82, as well as Claims 16, 65 and 81 (on which Claims 17, 66 and 82 depend), to clarify that a default provider will, in many cases, supply at least a portion of the electric power or natural gas needed by one or more buyers (e.g., resellers or end users, including end users who are customers of a reseller) during a specific future time interval; when at least a first Provider has been designated as a result of the auction process to supply a fixed quantity of electric power or natural gas to such buyer(s).

For at least the reasons discussed above, Applicants respectfully traverse this rejection of Claims 17, 66 and 82 in view of at least this additional ground supporting patentability for Claims 17, 66 and 82.

i. Rejection of Dependent Claims 8, 18, 26, 32, 58, 67, 73 and 93 under 35 U.S.C. § 103(a)

At page 6 of the Office Action, the Examiner has rejected Claims 8, 18, 26, 32, 58, 67, 73 and 93 under 35 U.S.C. § 103(a) as being unpatentable over Sibley in view of U.S. Patent No. 6,026,383 ("Ausubel"). Applicants respectfully traverse this rejection of Claims 8, 18, 26, 32, 58, 67, 73 and 93 in view of at least two additional grounds supporting patentability for Claims 8, 18, 26, 32, 58, 67, 73 and 93 under 35 U.S.C. § 103(a).

Ausubel (U.S. Patent No. 6,026,383) discloses a method and system in which participants are bidders bidding to buy or sell multiple items being auctioned at the same time. Participants in Ausubel may be provided bidding history information about other participants' bidding activities (for example, bidder identities, the activity levels of all bidders, and/or the entire history of all bids). In the Office Action the Examiner sets forth his grounds for rejection of Claims 8, 18, 26, 32, 58, 67, 73 and 93:

"It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sibley to include transmitting historical energy usage data associated with the at least one reseller, or with the at least one customer, to at least a portion of the plurality of energy providers, as disclosed in Ausubel, because it would advantageously allow the participants to estimate each other's demand or supply curve which is needed for making trading decisions, as specifically stated in Ausubel (C. 3, L. 53-65)."

We respectfully but strongly disagree with the Examiner's reasoning. We do not agree that the references above to "as disclosed in Ausubel" and then "as specifically stated in Ausubel" are supported by the detailed disclosure in Ausubel.

First, the demand and supply curves described in Ausubel are not related to historical energy usage, but rather refer to (i) a buyer setting different prices at which he is willing to buy different quantities of the items being auctioned (creating a demand curve), and (ii) a seller setting different prices at which he is willing to sell different quantities of the items being auctioned (creating a supply curve). See Ausubel, C. 3, L.

43 – C. 4, L. 10. In particular, please refer to Ausubel's definitions of “demand curve” and “contingent demand curve” at Ausubel, C. 8, L. 1-14:

“A demand curve is a table of the quantity which a bidder desires at each possible price that may be named in the course of the auction. ... Contingent demand curves allow a bidder to vary his demand curve based on the bidding history received from the bidding information processor. For example, the quantity which a bidder demands at a particular price may depend on the quantity which another bidder demanded at a previous price.”

The use of the demand curve in Ausubel is a technique to enable automated bidding by a buyer during the course of the auction, without revealing more to the auctioneer (or to other bidders) about that buyer's bidding strategy than is absolutely necessary - especially, for example, his willingness to pay higher prices than he may have bid so far in the auction. In general, see Ausubel at C. 3, L. 43 – C., L. 10 and C. 8, L. 1 – C. 9, L. 2. The “demand curve” described in Ausubel has nothing to do with the usage of a commodity, whether in the past or in the future.

Second, the Examiner relies on Ausubel to support his statement that transmitting historical energy usage data “... would advantageously allow the participants to estimate each other's demand or supply curve which is needed to make trading decisions, as specifically stated in Ausubel (C. 3, L. 53-65).” We respectfully suggest that this reliance by the Examiner is misplaced. The cited passage from Ausubel (C. 3, L. 53-65) refers to the auctioneer accepting from a bidder “... a ‘sealed bid’ consisting of a demand or supply curve or a set of contingent demand or supply

curves, with the advantage that the auctioneer only gets to observe the portion of the bidder's demand or supply curve which is needed to decide the outcome (i.e., each bidder's ultimate quantity and payment) of the auction." For more context, see Ausubel, C. 3, L. 43 - C. 4, L. 10.

Reading the entirety of the paragraph in Ausubel in which the passage cited by the Examiner appears (see C. 3, L. 53 – C. 4, L. 10) makes it clear that a bidder's demand or supply curve is submitted as part of a "sealed bid" by that bidder, meaning none of the other bidders is permitted to see the contents of that bid (including, of course, any portion of the first bidder's demand or supply curve). Only the auctioneer is permitted to see the contents of the sealed bid, but even the auctioneer "only gets to observe the portion of the bidder's demand or supply curve which is needed to decide the outcome ... of the auction." According to Ausubel (C. 3, L. 65 – C. 4, L. 5), "the unused portion of the demand or supply curve (e.g., the portion above the market-clearing price, and for contingencies which are not reached) never gets transmitted to the auctioneer Thus, the confidentiality of the unused part of the demand or supply curve is preserved." As a result, the other bidders never even get to see the demand or supply curve submitted by the first bidder.

Third, the "trading decisions" to which the Examiner refers in his reasoning for rejection are, in fact, the decisions made in Ausubel at the level of the auctioneer, not at the level of the participating bidders (C. 3, L. 53-65). It should also be pointed out that it would be highly unusual (and generally very disadvantageous) for a trader wishing to buy a commodity to reveal at the outset to other traders, from at least one of whom he plans to buy that commodity, the various prices he would be willing to pay for

different quantities of that commodity. The trading expertise of the buyer would be compromised to the detriment of the buyer and to the great advantage of the other traders. Ausubel does not suggest this approach – in fact, the method and system described in Ausubel attempts to protect the buying bidder from this disadvantageous result (C. 3, L. 65 – C. 4, L. 10). As a much more workable alternative, the Ausubel method and system describes making bidding history information available (that is, information on the bids to buy or sell already made by the participating bidders) (C. 9, L. 22-28). This bidding history information, however, has nothing to do with actual usage of the commodity (if any), in the past or in the future, by a buying bidder.

Fourth, the Ausubel method and system is an auction for specific quantities of an item (or series of items) at specific prices. Like Sibley, Ausubel is not an auction process based on the amount of the commodity needed for future use by the buyer – i.e., an auction in which, as described in the pending Application, the primary purpose of transmitting historical energy usage data to prospective bidding suppliers is to assist each bidder in estimating how much energy this bidder may, in fact, be required to supply to a buyer if the bidder is ultimately designated as one of the winning suppliers. Of course, in most cases historical energy usage data is only a guide, not a guarantee, that future energy needs (which one or more winning bidders will have committed to supply) will parallel the hourly, daily, monthly and seasonal usage that the historical usage data indicates.

Finally, Applicants wish to point out that Claims 18, 32, 67 and 93 refer to periodic reports of energy usage by the buyer(s) (e.g., one or more resellers or end users, including end users who are customers of a reseller) being made available to at

least one of the designated suppliers - but these periodic reports would show energy usage for periods which begin after the auction has concluded (days, months, or even years after) and the supplier(s) have, in fact, started supplying electric power or natural gas to the buyer(s) in accord with the results of the auction. Ausubel contains no disclosure even remotely similar to this claimed subject matter in the pending Application.

Applicants respectfully traverse the Examiner's assertion that the disclosure of Ausubel teaches transmitting "historical usage data" and/or "periodic usage reports." More generally, however, Applicants respectfully submit that there has been shown no teaching, suggestion, or motivation to support a combination of Ausubel with Sibley.

For at least the reasons stated above, Applicants respectfully traverse the rejection of Claims 8, 18, 26, 32, 58, 67, 73 and 93 in view of the additional grounds supporting patentability for these Claims. For all these reasons, we respectfully ask that the rejection of Claims 8, 18, 26, 32, 58, 67, 73 and 93 be withdrawn and request allowance thereof.

V. Remaining Rejections

Applicants respectfully submit that any and all remaining rejections presented in the Office Action are believed to be moot, because Applicants respectfully submit that all pending claims are patentable at least by virtue of the arguments made above, and comments concerning the remaining rejections are thus believed to not be necessary. Applicants respectfully submit that it shall not be construed that Applicants

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acquiesce with any of the remaining rejections. Rather, Applicants reserve the right to argue the patentability of each claim on its own merit with respect to any and all rejections.⁵

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request allowance of all pending claims, i.e., Claims 1-35 and 49-95.

Applicants thank the Examiner for his attention to this Application. If the Examiner has any questions or other matters whose resolution could be advanced by a telephone call, the Examiner is invited to contact the undersigned at his telephone number below. The Examiner is authorized to charge any deficiency and/or credit any overpayment to Deposit Account 503571.

Respectfully submitted,

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⁵ Also, regarding all references cited by the Office Action, Applicants respectfully reserve the right, in this and/or another proceeding, to challenge any allegation that any of such references constitute prior art (e.g., by antedating same). Applicants respectfully submit that no statement made in this Response and/or absence thereof shall be construed as an admission that any reference constitutes prior art.